

Notice of Allowability	Application No.	Applicant(s)	
	09/505,458	ROSEN ET AL.	
	Examiner	Art Unit	
	Frances P. Oropeza	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment (6/3/04).
2. ☒ The allowed claim(s) is/are 1-60.
3. ☒ The drawings filed on 11 February 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of the:

 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.

 (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date <u>8/18/04</u> . 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____
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ALLOWANCE

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview between Peter J. Phillips and Frances P. Oropeza on 8/18/04.

The application has been amended as follows:

In claim 1, line 6, after "periodic" the following has been inserted ---pacing level--.

In claim 12, line 7, "pacemaker" has been changed to --pacing level--.

In claim 20, line 7, after "periodic" the following has been inserted --pacing level--.

In claim 31, line 7, "pacemaker" has been changed to --pacing level--.

In claim 39, line 6, after "periodic" the following has been added --pacing level--.

In claim 50, line 6, "pacemaker" has been changed to --pacing level--.

In claim 58, line 6, "pacemaker" has been changed to --pacing level--.

In claim 59, line 6, "pacemaker" has been changed to --pacing level--.

In claim 60, line 6, "pacemaker" has been changed to --pacing level-- . .

Reasons for Allowance

2. Claims 1-60 are allowed. The following is an examiner's statement of reasons for allowance: The subject matter of the independent claims could either not be found or was not

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suggested in the prior art. The subject matter not found was “a method/ device of treating the heart to remodel gap junctions/ alter the effective refractory periods/ induce ion channel remodeling” by applying “periodic pacing level signals”, in combination with the other elements of the claims.

Examiner Oropeza found the arguments filed by Mr. Phillips on 6/3/04 to be convincing. Mr. Phillips argued the instant invention uses excitatory electrical fields to treat the heart while the prior art of record, Ben-Haim et al. (US 6363279), uses non-excitatory electrical fields. The independent claims of the instant invention were amended by Examiner's Amendment to include the use of “periodic pacing level electrical signals”, which creates the excitatory field and distinguished the instant invention over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this or earlier communications from the Examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Friday from 9 a.m. to 5:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 872-9306 for regular and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
8/18/04

[Signature]
JEFFREY R. JASTRZAB
PRIMARY EXAMINER
3762
8/30/04